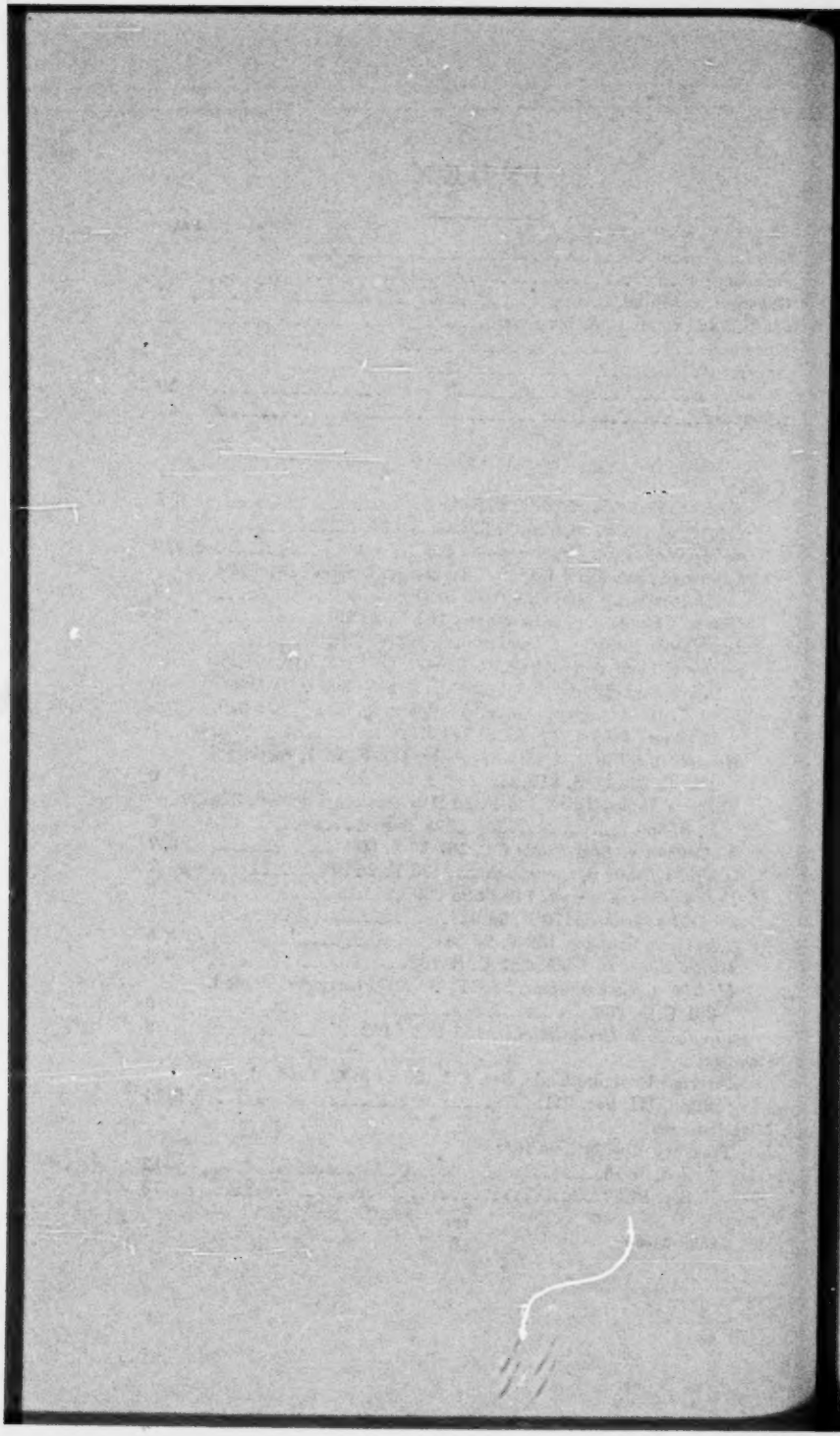
INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute and regulations involved	2
Statement	2
Argument	5
Conclusion	10
Appendix	11

CITATIONS

Cases:	
Allen v. *Trust Co.*, 326 U. S. 630	6, 8
City Bank Co. v. *McGowan*, 323 U. S. 594	6, 9
Colorado Bank v. *Commissioner*, 305 U. S. 23	6, 7, 9
Commonwealth Trust Co. of Pittsburgh v. *Driscoll*, 137 F. 2d 653, certiorari denied, 321 U. S. 764	7
Cronin's Estate v. *Commissioner*, 164 F. 2d 561	10
Davidson's Estate v. *Commissioner*, 158 F. 2d 239	6
Farmers' Loan & Trust Co. v. *Bowers*, 68 F. 2d 916, certiorari denied, 293 U. S. 565; 296 U. S. 649; 299 U. S. 582	6
First Trust & Deposit Co. v. *Shaughnessy*, 134 F. 2d 940, certiorari denied, 320 U. S. 744	7
Humphrey's Estate v. *Commissioner*, 162 F. 2d 1, certiorari denied, 332 U. S. 817	6
Kroger's Estate, In re, 145 F. 2d 901, certiorari denied, 324 U. S. 866	6
McCaughn v. *Real Estate Co.*, 297 U. S. 606	6, 7
O'Neal's Estate v. *Commissioner*, 170 F. 2d 217	7
Pate v. *Commissioner*, 149 F. 2d 669	6
Scofield v. *Bethea*, 170 F. 2d 934	7
Thomas v. *Graham*, 158 F. 2d 561	6
United States v. *Wells*, 283 U. S. 102	6
Updike v. *Commissioner*, 88 F. 2d 807, certiorari denied, 301 U. S. 708	6
Vanderlip v. *Commissioner*, 155 F. 2d 152	6
Statute:	
Internal Revenue Code, Sec. 811 (26 U. S. C. 1946 ed. and Supp. III, Sec. 811)	5, 9, 11
Miscellaneous:	
Treasury Regulations 105:	
Sec. 81.16	12
Sec. 81.20	13

889846—50



In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 80

ESTATE OF MICAJAH R. REEVES, ALSO KNOWN AS M. R. REEVES, JOHN M. REEVES AND ERNEST R. EARLY, EXECUTORS, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Tax Court (R. 149–157) is not officially reported. The opinion of the Court of Appeals (R. 174–177) is reported at 180 F. 2d 829.

JURISDICTION

The judgment of the Court of Appeals was entered March 17, 1950. (R. 177–178.) The petition for a writ of certiorari was filed May 19, 1950. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTION PRESENTED

Whether the facts support the conclusion of both courts below that transfers of stock made by decedent during his lifetime were made "in contemplation of his death" within the meaning of Section 811 (c) of the Internal Revenue Code.

STATUTE AND REGULATIONS INVOLVED

These appear in the Appendix, *infra*, pp. 11–13.

STATEMENT

The facts as found by the Tax Court may be summarized as follows:

The decedent, Micajah R. Reeves, died unmarried on September 7, 1942, at the age of 65. In 1922 he and his brother John organized Reeves Brothers, Inc. (hereafter called the "corporation"), a commission house and converter of cotton textiles. Decedent was the president, the treasurer, and a director of the corporation until his death. On August 21, 1935, the corporation had outstanding 3,665 shares of preferred stock and 19,753 shares of common. Decedent owned 1,902 shares of the preferred, and 15,345 of the common; his brother John owned 298 of the preferred and 2,681 of the common. The remaining shares were held in small blocks by about 33 other stockholders. Voting rights were vested in the common from June of 1937 until the time of decedent's death. (R. 149–150.)

On August 21, 1935, the decedent created 22 trusts, to which he transferred a total of 3,200 shares of the corporation's common stock. Each trust instrument was the same except for the name of the beneficiary and number of shares transferred. The trustees were the decedent, his brother John, and a nephew. The beneficiaries were his four brothers, his sister, the widow of a deceased brother, nephews and nieces. Of the 3,200 shares transferred by the decedent, 1,100 went to the trust for his brother John, and 100 went to each of the other 21 trusts. From time to time decedent transferred additional shares to each trust, so that the total number transferred by the time of his death was 9,655 shares. He also transferred 50 shares of stock of a subsidiary corporation to each of three of the trusts. On January 2, 1940, decedent created a twenty-third trust for a niece born in 1939. At the date of his death decedent owned 5,521 of the common stock. The next largest stockholder was his brother John who owned 2,591 shares. (R. 150–151.) The shares transferred to the 23 trusts were worth $1,354,046 at the time of decedent's death, and represented almost one-half of the value of his estate. (R. 152–153.)

The net income (dividends) of each trust was payable to the named beneficiary for life. The corpus (stock) was to go to the life beneficiary's descendants or, in default of any descendant, to

those entitled under New York intestacy law. The trustees were directed to retain and were authorized to vote the stock. Decedent reserved the power to terminate each trust at any time with the written consent of his co-trustees and the life beneficiary. (R. 151–152.)

Decedent continued to control the corporation until his death. (R. 156.) No dividends were ever paid during his lifetime on the stock comprising the corpora of the trusts, and no accounting was ever made to any court by the trustees. After decedent's death on September 7, 1942, the corporation paid a dividend of $4 per share for its fiscal year ended June 30, 1943, and $2 per share for the first half of its fiscal year 1944. The annual net earnings of the corporation on its total outstanding common stock (after taxes, renegotiation requirements, and preferred stock dividends) during the years 1933 through 1942 ranged from 19 cents to $18.88 per share, with the exception of a deficit of 4 cents per share in 1938. The net working capital during these years ranged from $307,347 to $1,663,301. (R. 153–154.)

The decedent made a number of gifts to assist his relatives during his lifetime, which the Commissioner did not regard as transfers within the meaning of Section 811 (c) or (d) of the Internal Revenue Code. (R. 154.)

The decedent's will was executed on February 18, 1938, and left 25 per cent of his estate to his brother John, 25 per cent to a niece, 15 per

cent to his sister, 15 per cent to a nephew, and 10 per cent each to two other nephews. Each of these legatees was a beneficiary of one of the *inter vivos* trusts. (R. 154.)

The Commissioner determined that the transferred stock was includible in decedent's gross estate under Section 811 (c) of the Internal Revenue Code as property transferred in contemplation of death, and also under Section 811 (d) by reason of decedent's reservation of the power to terminate the trusts with the consent of his co-trustees and the life-beneficiary. (R. 154–155.) The Tax Court found that the transfers were not made in contemplation of death insofar as decedent's health was concerned, but that they were nevertheless made in contemplation of death within the meaning of Section 811 (c). Having sustained the Commissioner's determination on this ground, the Tax Court considered it unnecessary to decide whether the transferred stock was also includible in decedent's gross estate under Section 811 (d). (R. 155–157.) The Court of Appeals affirmed. (R. 177–178.)

ARGUMENT

The decision below is in accord with established principles. There is no conflict, and no necessity for further review.

1. Section 811 (c) of the Internal Revenue Code (Appendix, *infra*) requires inclusion in a decedent's gross estate, for federal estate tax

purposes, of property transferred during his lifetime "in contemplation of his death". It is settled that this provision was designed to reach *inter vivos* transfers intended as substitutes for testamentary dispositions. *United States* v. *Wells*, 283 U. S. 102, 116–117; *Allen* v. *Trust Co.*, 326 U. S. 630, 635–636; *City Bank Co.* v. *McGowan*, 323 U. S. 594, 599; *Colorado Bank* v. *Commissioner*, 305 U. S. 23, 27; *McCaughn* v. *Real Estate Co.*, 297 U. S. 606, 608. A transfer may be a substitute for a testamentary disposition, and hence "in contemplation of death" within the meaning of the statute, even though at the time it is made the decedent is in sound health and has no thought that death is near. If the transfer is motivated by the "thought of death", rather than by "purposes associated with life", it falls within the sweep of the statute whether or not death is imminent. *United States* v. *Wells, supra,* pp. 117, 118; *Allen* v. *Trust Co., supra,* p. 635. The lower courts, including those below, have consistently applied this test.[1]

[1] *Farmers' Loan & Trust Co.* v. *Bowers*, 68 F. 2d 916 (C. A. 2d), certiorari denied, 293 U. S. 565; 296 U. S. 649; 299 U. S. 582; *Vanderlip* v. *Commissioner*, 155 F. 2d 152 (C. A. 2d); *Updike* v. *Commissioner*, 88 F. 2d 807 (C. A. 8th), certiorari denied, 301 U. S. 708; *In re Kroger's Estate*, 145 F. 2d 901 (C. A. 6th), certiorari denied, 324 U. S. 866; *Pate* v. *Commissioner*, 149 F. 2d 669 (C. A. 8th); *Davidson's Estate* v. *Commissioner*, 158 F. 2d 239 (C. A. 10th); *Thomas* v. *Graham*, 158 F. 2d 561 (C. A. 5th); *Humphrey's Estate* v. *Commissioner*, 162 F. 2d 1 (C. A. 5th), certiorari denied, 332

Whether a particular transfer was made "in contemplation of death" presents a question of pure fact, no single circumstance being decisive. The Commissioner's determination is presumptively correct, the burden of proving it to be wrong rests upon the taxpayer, and the trial court's decision is not to be disturbed unless it is clearly erroneous. *Colorado Bank* v. *Commissioner, supra; McCaughn* v. *Real Estate Co., supra.*

2. Both courts below concluded that taxpayer failed to sustain the burden of proving that the transfers here involved were not made in contemplation of death, and the facts amply support that conclusion. Between 1935 and the time of his death in 1942 the decedent, who was unmarried, created 23 separate trusts in each of which he named a close relative as the life-beneficiary and the life-beneficiary's descendants as remaindermen. To each trust he transferred some of the shares of stock of a corporation of which he was the president and controlling stockholder. As trustees he named himself and two relatives, who were authorized to vote the stock held by the trust, and he continued to control the corporation

---

U. S. 817; *O'Neal's Estate v. Commissioner*, 170 F. 2d 217 (C. A. 5th); *Scofield* v. *Bethea*, 170 F. 2d 934 (C. A. 5th); *First Trust & Deposit Co.* v. *Shaughnessy*, 134 F. 2d 940 (C. A. 2d), certiorari denied, 320 U. S. 744; *Commonwealth Trust Co. of Pittsburgh* v. *Driscoll*, 137 F. 2d 653 (C. A. 3d), certiorari denied, 321 U. S. 764.

until his death. The transfers did not aid the donees during the decedent's lifetime, nor did they serve any other lifetime purpose of the decedent. Until decedent's death the corporation declared no dividends on the stock, although it had substantial net earnings available for the purpose, with the result that while decedent lived and managed the affairs of the corporation no income whatever was received by the trusts or the beneficiaries. Almost immediately after the decedent's death dividends were declared. The record contains no explanation for the corporation's failure to pay dividends during the decedent's lifetime. (R. 149–156.) On the basis of these and all the other evidentiary facts, the Tax Court found that the inactive trusts were motivated by purposes associated with death rather than life, and were merely substitutes for testamentary dispositions to the natural objects of the decedent's bounty. (R. 155–157.) The court below reached the same conclusion on review. (R. 176–177.) Where as in this case "two courts have resolved that question of fact" the same way, their "concurrent findings" will be "accepted here without reexamination of the evidence." *Allen* v. *Trust Co., supra,* p. 636. Even if the evidence were reexamined here, under familiar rules governing the scope of appellate review of factual determinations the Tax Court's decision is entitled to

affirmance. *Colorado Bank* v. *Commissioner*, 305 U. S. 23.[2]

3. The decision below is not, as taxpayer asserts (Pet. 7, Br. 10), in conflict with *City Bank Co.* v. *McGowan*, 323 U. S. 594, and *Colorado Bank* v. *Commissioner, supra.* On the contrary, the courts below followed the very principles which this Court there reiterated. In the *City Bank* case, which involved transfers by an incompetent's estate pursuant to court order, the particular portion of the District Court's decision to which taxpayer adverts (Br. 13) is addressed to facts which bear no resemblance to those of this case; moreover, this portion of the decision was affirmed on appeal. In the *Colorado Bank* case, this Court stressed that whether a transfer is one "in contemplation of death" within the meaning of the statute presents a question of fact in each case; since the Tax Court's conclusion that the transfer did not fall in that category was supported by substantial evidence, it was held that the Court of Appeals erred in

[2] The decision below is correct for the additional reason, alternatively urged by the Commissioner (R. 155), that the transferred stock is includible in decedent's gross estate under Code Section 811 (d) (2) (Appendix, *infra*) because of his reservation of the right to terminate each trust with the consent of his co-trustees and the life-beneficiary (R. 152). The Tax Court found it unnecessary to pass on this alternative contention in view of its holding that the stock was includible in the gross estate under Section 811 (c). (R. 157.)

reversing the Tax Court. Here too the Tax Court's decision is supported by substantial evidence, and affirmance of its decision by the court below was in harmony with the holding in the *Colorado Bank* case. In *Cronin's Estate* v. *Commissioner,* 164 F. 2d 561 (C. A. 6th), upon which taxpayer also relies for conflict (Pet. 7, Br. 10), the court recognized that the question was one of fact but reversed the Tax Court's decision on the ground that it lacked evidentiary support. No such situation is here presented.

CONCLUSION

The decision below is correct, and there is no conflict. The petition for a writ of certiorari should be denied.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.
THERON LAMAR CAUDLE,
Assistant Attorney General.
ELLIS N. SLACK,
A. F. PRESCOTT,
HARRY BAUM,
Special Assistants to the Attorney General.

JUNE 1950.

APPENDIX

Internal Revenue Code:

SEC. 811. GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible wherever situated, except real property situated outside of the United States—

* * * * *

(c) [As amended by the Act of October 25, 1949, c. 720, 63 Stat. 891, Sec. 7 (a)] *Transfer in Contemplation of, or Taking Effect at, Death.*—(1) *General Rule.*—To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise—

(A) in contemplation of [illegible] death. * * *

* * * * *

(d) *Revocable Transfers*—

* * * * *

(2) *Transfers on or Prior to June 22, 1936.*—To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, ex-

cept in case of a bona fide sale for an adequate and full consideration in money or money's worth. Except in the case of transfers made after June 22, 1936, no interest of the decedent of which he has made a transfer shall be included in the gross estate under paragraph (1) unless it is includible under this paragraph;

* * * * *

(26 U. S. C. 1946 ed. and Supp. III, Sec. 811.)

Treasury Regulations 105, promulgated under the Internal Revenue Code:

SEC. 81.16. *Transfers in contemplation of death.*—* * *

* * * * *

The phrase "contemplation of death," as used in the statute, does not mean, on the one hand, that general expectation of death such as all persons entertain, nor, on the other, in its meaning restricted to an apprehension that death is imminent or near. A transfer in contemplation of death is a disposition of property prompted by the thought of death (though it need not be solely so prompted). A transfer is prompted by the thought of death if it is made with the purpose of avoiding the tax, or as a substitute for a testamentary disposition of the property, or for any other motive associated with death. The bodily and mental condition of the decedent and all other attendant facts and circumstances are to be scrutinized to determine whether or not such thought prompted the disposition.

* * * * *

SEC. 81.20. *Transfers with power to change the enjoyment.*—* * *

* * * * *

The provisions of this section do not apply to a transfer if the power may be exercised only with the consent of all parties having an interest, vested or contingent in the transferred property, and if the power adds nothing to the rights of the parties as conferred by the applicable local law.

U. S. GOVERNMENT PRINTING OFFICE: 1980